

FILED
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SEP 10 9:10 AM

UNITED STATES OF AMERICA

vs.

Case No. 8:03-CR-77-T-30TBM

GHASSAN ZAYED BALLUT
/

**DEFENDANT GHASSAN BALLUT'S MOTION FOR BILL
OF PARTICULARS AND MEMORANDUM OF LAW**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, pursuant to Federal Rule of Criminal Procedure 7(f), hereby requests this Honorable Court to direct the Government to file a bill of particulars as to certain Counts of the Indictment charged against the Defendant, and as grounds therefore would state:

Count One

1. As to Count One of the Indictment, the Defendant is charged with conspiracy to violate Title 18, United States Code, Section 1962(c), over a period of approximately eighteen years, starting from an unknown date even 1984, even though the Indictment acknowledges that the Defendant first entered the United States on September 12, 1985. See Count One, paragraph 13.

2. The first Overt Act alleged against the Defendant occurred on September 29, 1991, approximately seven years after the starting date alleged for Count One. See Count One, Overt Act 7.

3. The Defendant is accused in an Overt Act with concealing information in an INS document concerning membership in the Palestinian Islamic Jihad (hereinafter "PIJ") on October

11, 1991, although there is no allegation concerning any legal obligation he violated in doing so and whether he would be criminally liable as a result. See Count One, Overt Act 8.

4. Because of the broad expanse of time in the allegations of Count One, including an indefinite period of time before the Defendant's first entry into the United States and another indefinite period of time of some seven years before his first alleged Overt Act, the Defendant is greatly prejudiced in his ability to understand the nature and cause of the accusations against him and to defend against these accusations, in violation of his rights under the Fifth and Sixth Amendments of the United States Constitution.

5. Several of the Overt Acts incorporated into Count Two, specifically Overt Acts 236, 240, 247, and 253 of Count One, are now deemed suspect because the referenced person in the described telephone conversations is not Co-Defendant ABD AL AZIZ AWDA as previously alleged, and therefore the import of these Overt Acts is incapable of determination.

6. The Defendant therefore requests the Court to direct the Government to state with particularity (a) the first date on which the Defendant is alleged to have joined the conspiracy described in Count One, (b) the source and nature of the Defendant's legal obligation, if any, to reveal information concerning his membership in PIJ in the INS document described in Count One, Overt Act 8, and (c) whether the allegations in Overt Acts 236, 240, 247, and 253 of Count One are void and of no effect, or alternatively the identity of the person referred to in these Overt Acts.

Count Two

7. The Defendant is charged in Count Two with conspiracy to murder and maim persons outside of the United States, starting on an unknown date in 1988.

8. As previously stated, the first Overt Act alleged against the Defendant occurred on September 29, 1991, some three years after the alleged start of this conspiracy. Count One, Overt Act 7.

9. Count Two lacks any specific reference to the Defendant except for described telephone conversations occurring over a period of years during which the Defendant does not indicate any willingness or prior knowledge to engage in the murder or maiming of any persons.

10. As previously stated, several of the Overt Acts incorporated into Count Two, specifically Overt Acts 236, 240, 247, and 253 of Count One, are now deemed suspect because the referenced person in the described telephone conversations is not Co-Defendant ABD AL AZIZ AWDA as previously alleged, and therefore the import of these Overt Acts is incapable of determination.

11. The Defendant therefore requests the Court to direct the Government to state with particularity (a) the first date on which the Defendant is alleged to have joined the conspiracy described in Count Two, and (b) whether the allegations in Overt Acts 236, 240, 247, and 253 of Count One are void and of no effect, or alternatively the identity of the person referred to in these Overt Acts.

Count Three

12. The Defendant is charged in Count Three with conspiracy to knowingly provide material support or resources to a designated foreign terrorist organization, namely, the PIJ, starting from an unknown date in 1988.

13. An essential allegation in Count Three is that the Secretary of State, acting pursuant to authority granted in Title 8, United States Code, Section 1189(a), designated the PIJ to be a

foreign terrorist organization as defined in Title 18, United States Code, Section 2339B(g)(6).

14. This designation by the Secretary of State did not occur until October 7, 1997.

15. It is essential to the Defendant's ability to understand the nature and cause of the charge and to prepare his defense against it to be informed whether the conspiracy alleged in Count Three did in fact start on a date earlier than the designation by the Secretary of State on October 7, 1997.

16. Again, several of the Overt Acts incorporated into Count Three, specifically Overt Acts 236, 240, 247, and 253 of Count One, are now deemed suspect because the referenced person in the described telephone conversations is not Co-Defendant ABD AL AZIZ AWDA as previously alleged, and therefore the import of these Overt Acts is incapable of determination.

17. The Defendant therefore requests the Court to direct the Government to state with particularity (a) the first date on which the Defendant is alleged to have joined the conspiracy described in Count Three, (b) if the date is prior to October 7, 1997, to state the authority or factual basis for the allegation that the PIJ was a designated foreign terrorist organization prior to that date, and (c) whether the allegations in Overt Acts 236, 240, 247, and 253 of Count One are void and of no effect, or alternatively the identity of the person referred to in these Overt Acts.

Count Four

18. The Defendant is charged in Count Four with conspiracy to make and receive contributions of funds, goods, or services to or for Specially Designated Terrorists, starting from an unknown date prior to January 25, 1995.

19. January 25, 1995, is the operative date of Presidential Executive Order 12947 on which the allegations in Count Four heavily rely, and it was the purpose of this Executive Order

to declare PIJ and other groups to be Specially Designated Terrorist organizations.

20. The Defendant is left unable to determine the authority or factual basis for alleging the PIJ to be a Specially Designated Terrorist organization prior to January 25, 1995.

21. Once again, several of the Overt Acts incorporated into Count Four, specifically Overt Acts 236, 240, 247, and 253 of Count One, are now deemed suspect because the referenced person in the described telephone conversations is not Co-Defendant ABD AL AZIZ AWDA as previously alleged, and therefore the import of these Overt Acts is incapable of determination.

22. The Defendant therefore requests the Court to direct the Government to state with particularity (a) the first date on which the Defendant is alleged to have joined the conspiracy described in Count Four, (b) if the date is prior to January 25, 1995, to state the authority or factual basis for the allegation that the PIJ was a Specially Designated Terrorist organization prior to that date, and (c) whether the allegations in Overt Acts 236, 240, 247, and 253 of Count One are void and of no effect, or alternatively the identity of the person referred to in these Overt Acts.

WHEREFORE, the Defendant requests this Honorable Court to direct the Government to file its bill of particulars stating the information requested above.

Memorandum of Law

The Court is authorized to direct the filing of a bill of particulars by the Government. Fed. R. Crim. P. 7(f). The purpose of a bill of particulars is to inform a defendant of the charge against him with sufficient precision to permit the defendant to prepare a defense, to minimize surprise at

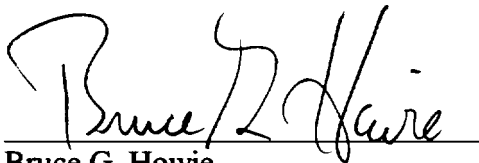
trial, and to plead double jeopardy if there is a later prosecution for the same offense. See United States v. Warren, 772 F.2d 827 (11th Cir. 1985). A district court has broad discretion in ruling on a motion for a bill of particulars. See Will v. United States, 389 U.S. 90 (1967).

In Count One, the allegations against the Defendant are spread out over appreciable periods of time. First, the RICO conspiracy is alleged to have run from an unknown date in 1984 to late 2002, a period of about eighteen years. Second, the Defendant's entry into this conspiracy is not indicated, even though it is suggested in Count One that he entered the conspiracy a year before he entered the United States. Third, the Defendant's first alleged Overt Act occurred seven years after the alleged start of the conspiracy. Fourth, it is now understood that Co-Defendant ABD AL AZIZ AWDA was not being referred to in certain telephone conversations described in the Overt Acts, and it is uncertain whether the person referred to was a Specially Designated Terrorist as was Co-Defendant AWDA or whether it was a person of no relevance to the charge.

In addition, the Defendant is accused of making a false entry or failing to include information in an INS document on October 11, 1991, without any indication in Count One that he had a legal obligation to do so or whether he is subject to criminal liability as a result. The Defendant has the right to know the nature of this last accusation in the event he is required to raise double jeopardy bars to its future prosecution. The immense expanse of time in which the Defendant is alleged to have been a member of this conspiracy makes it impossible for the Defendant to understand the nature and cause of the charge, in violation of his Sixth Amendment rights, and makes it impossible to defend against the charge, in violation of his due process rights under the Fifth Amendment. A bill of particulars is the appropriate relief.

As to Counts Two, Three, and Four, the concerns are similar. The beginning of each alleged conspiracy is uncertain, and the conspiracies themselves are alleged to have occurred over a period of several years. The same issues about the now-suspect references to ABD AL AZIZ AWDA also apply in Counts Two, Three, and Four. As to Counts Three and Four, there appears to be a discrepancy between the beginning dates of the conspiracies and the operative dates of declarations by the Secretary of State and the President that profoundly affected the legal status of the PIJ and the potential criminal liability of the Defendant. It is essential to the Defendant's ability to understand the nature and cause of the charges and to defend against these charges that the Government be required to file a bill of particulars.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce G. Howie", written over a horizontal line.

Bruce G. Howie
Piper, Ludin, Howie & Werner, P.A.
5720 Central Avenue
St. Petersburg, FL 33707
Telephone (727) 344-1111
Facsimile (727) 344-1117
Florida Bar No. 263230
Attorney for GHASSAN ZAYED BALLUT

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S.

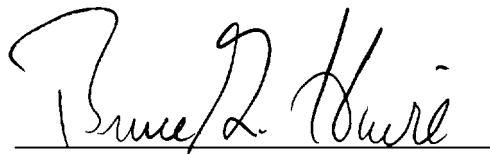
Mail to the following this 31st day of July, 2003:

Walter E. Furr, III Esq.
Office of the United States Attorney
400 North Tampa Street, Suite 3200
Tampa, FL 33602

Sami Al-Arian, Reg. #40939-018
FCC-USP
P.O. Box 1033
Coleman, FL 33521

Donald E. Horrox, Esq.
Office of the Federal Public Defender
400 North Tampa Street, Suite 2700
Tampa, FL 33602

Daniel M. Hernandez, Esq.
902 North Armenia Avenue
Tampa, FL 33609

A handwritten signature in black ink, appearing to read "Bruce G. Howie", written over a horizontal line.

Bruce G. Howie
Piper, Ludin, Howie & Werner, P.A.
5720 Central Avenue
St. Petersburg, FL 33707
Telephone (727) 344-1111
Facsimile (727) 344-1117
Florida Bar No. 263230
Attorney for GHASSAN ZAYED BALLUT